IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.378 OF 1993

Vasantrao Baburao Garad,
age 54 years, Occ: Doctor,
r/o Mohol, Dist: Solapur. .... Petitioner

- Versus -

1. Dilip Gajanan Karande,
age 38 years, Occ: Business,
r/o Kasable, Mohol,
Dist: Solapur.

2. Sou. Bayadi @ Bharati w/o
Dattatraya Khulale, age 34
years, Occ: Household,
r/o S.M.G. College Quarters,
Karad, Dist: Satara.

3. Sou. Rajani w/o Subhash
Khankar, age 31 years,
Occ: Household, r/o Shivade,
Taluka Karad, Dist: Satara.

4. Madhuri d/o Gajanan Karande,
age 25 years, Occ: Household,
r/o Mohol, Dist: Solapur. .... Respondents

Shri G.S. Godbole for the Petitioner.

None present for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 05, 2004

ORAL JUDGMENT:

1. Heard the learned Advocate for the petitioner. None present for the respondents.

2. The petitioner challenges the impugned judgments and

orders passed by the lower Appellate Court as well as by the trial Court decreeing the suit for eviction of the petitioner from the suit premises on three grounds. Firstly, that the impugned judgment is contrary to the provisions of Order 41, Rule 31 of the Code of Civil Procedure as well as the law laid down in that regard by this Court in **Anita M. Barretto v. Abdul Wahid Sanaullah,** reported in 1984 Mh.L.J. 931. Secondly, that the lower Appellate Court did not either apply its mind to the specific plea raised by the petitioner being about acquisition of co-ownership right to the suit property pursuant to the purchase of one-half share of the co-owner of the suit premises by the petitioner and the effect of such purchase on the eviction order. Thirdly, the petitioner had raised the specific plea that the notice which was issued under Section 12(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter called as "the said Act", was bad in law on account of excessive demand of rent as the standard rent fixed was Rs.45/- whereas the demand was at the rate of Rs.100/- per month.

3. Needless to say that the Order 41, Rule 31 of the C.P.C. clearly provides thus:-

> "31. Contents, date and signature of judgment. - The judgment of the

> Appellate Court shall be in writing and shall state -
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> (a) the points for determination;
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> (b) the decision thereon;
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> (c) the reasons for the decision; and
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> (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;
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> and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

4. While dealing with the scope of the said provision of law and the obligation of the Appellate Court in that regard, the learned single Judge of this Court in **Anita Barretto's** case (supra) had held:-

> "17. This manner ignores that Order 41 rule 31(a) requires the appellate Court to state in its judgment the points that arise for determination after the

arguments are advanced. Asking such vague questions as mentioned above will not lead to the pronouncement of a well considered and reasoned judgment. Imagine a court of first appeal being confronted with the judgment where an issue is framed as to whether the suit of the plaintiff should be decreed. All concerned will be at sea if a suit is decided on an issue framed in that manner. As early as in Mhasu Vs. Davalat, dealing with a similar provision in the earlier Civil Procedure Code, it has been pointed out that the object of the Legislature in making it incumbent on an appellate Court to raise points for determination was to clear up the pleadings and focus the attention of the Court and of the parties on the specific and rival contentions of the latter. The points which must arise for determination by a Court of first appeal must cover all important questions involved in the case and they should not be general and vague. It is a matter of almost textbook knowledge that the exact questions which arise in the appeal and

> require determination must be stated in the judgment. "It is not sufficient to state the point to be determined in appeal whether or not the decision is consistent with the merits of the case". The point so stated is hardly a point for determination as contemplated in Order 41 rule 31 of the Code. The learned Judges of the Courts of first appeal should not approach the appeals merely from the point of speedily disposing of the same. The appeals must be also intelligently disposed of after taking note of the arguments advanced, the points arising from the arguments and other material and then deciding those points properly. A failure to understand the object of the provision such as Order 41 rule 31(a) of the Code has demonstrably resulted in the instant case in the failure of justice at the hands of the lower appellate Court."

The said judgment was followed by another learned single Judge of this Court in **Janardan Nago Patil v. Ramanand Ramdas Mishra,** reported in 2003 (4) Mh.L.J. 853. Considering the law being clearly laid down as regards

the obligation of the Appellate Court to frame proper points for determination before disposing the appeal, and bare reading of the impugned judgment discloses that apart from the point as to whether the petitioner was wilful defaulter in payment of rent, as contemplated under Section 12 of the said Act, no other point was formulated for consideration. Even the point which is formulated for consideration has not been in accordance with the provisions of law. It is not enough for the Court to consider as to whether the tenant is a defaulter in terms of the provision of Section 12 of the said Act. The Appellate Court has to consider the ingredients of the provision of law in relation to the ground for eviction of the tenant on account of default in payment of rent and with reference to those ingredients, based on the pleas raised by the party, to formulate the questions for consideration and then to proceed to analyse the materials on record and thereafter answer the questions formulated by the Court. Apparently, the lower Appellate Court has not performed any such exercise in the matter in hand and as rightly submitted by the learned Advocate for the petitioner, this is a fit case for setting aside the impugned judgment on that sole ground and to remand the matter to the lower Appellate Court to re-hear the matter and dispose of the same, bearing in mind the provisions of law comprised under Order 41, Rule 31 of the C.P.C., and

the decision of the learned single Judge of this Court in Anita Barretto's case and to take into consideration the rival contentions sought to be raised in the matter by both the parties and as well as the provisions of law applicable to the facts of the case and thereafter to dispose of the matter in accordance with the provisions of law. Needless to say that it is not necessary for this Court to consider the other two grounds sought to be raised in the matter and all the points in the matter are kept open for consideration by the lower Appellate Court.

5. For the reasons stated above, therefore, the impugned judgment and order is set aside and the matter is remanded to the lower Appellate Court to decide the appeal afresh bearing in mind the observations hereinabove and the law applicable to the case. Considering the fact that the appeal relates to the year 1990, the lower Appellate Court to dispose of the same as expeditiously as possible and both the parties are expected to render their co-operation in that regard to the lower Appellate Court. The rule is made absolute accordingly with no order as to costs. Needless to say that during the pendency and till the disposal of the appeal, the execution of the decree passed by the lower Appellate Court shall remain suspended.